

**UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT**

SUMMARY ORDER

Rulings by summary order do not have precedential effect. Citation to summary orders filed after January 1, 2007, is permitted and is governed by this Court's Local Rule 32.1 and Federal Rule of Appellate Procedure 32.1. In a brief or other paper in which a litigant cites a summary order, in each paragraph in which a citation appears, at least one citation must either be to the Federal Appendix or be accompanied by the notation: "(summary order)." A party citing a summary order must serve a copy of that summary order together with the paper in which the summary order is cited on any party not represented by counsel unless the summary order is available in an electronic database which is publicly accessible without payment of fee (such as the database available at <http://www.ca2.uscourts.gov/>). If no copy is served by reason of the availability of the order on such a database, the citation must include reference to that database and the docket number of the case in which the order was entered.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, in the City of New York, on the 20th day of May, two thousand eight.

PRESENT:

HON. RALPH K. WINTER,
HON. ROBERT D. SACK,
HON. DEBRA A. LIVINGSTON,
Circuit Judges.

DONG FENG DONG-CHEN,
Petitioner,

-v.-

No. 07-3113-ag

MICHAEL B. MUKASEY,*
Attorney General of the United States,
Respondent.

* Pursuant to Federal Rule of Appellate Procedure 43(c)(2), Attorney General Michael B. Mukasey is automatically substituted for former Attorney General Alberto Gonzales as the respondent in this case.

1 Appearing for Petitioner: Sheema Chaudhry (Michael Brown, *on the brief*), Law
2 Offices of Michael Brown, New York, NY.

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4 Appearing for Respondent: Anthony Norwood, Senior Litigation Counsel (Annette J.
5 Clark, *of counsel*, Terri J. Scadron, Assistant Director,
6 Jeffrey S. Bucholtz, Acting Assistant Attorney General, *on*
7 *the brief*), Office of Immigration Litigation, United States
8 Department of Justice, Civil Division, Washington, DC.
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11 UPON DUE CONSIDERATION of this petition for review of a decision of the Board of
12 Immigration Appeals (“BIA”), it is hereby ORDERED, ADJUDGED, AND DECREED that the
13 petition for review be DENIED.

14 Petitioner Dong Feng Dong-Chen, a native and citizen of the People’s Republic of China,
15 seeks review of an order of the BIA issued on June 26, 2007, dismissing his appeal from the decision
16 of an immigration judge (“IJ”) on November 29, 2005, denying his application for asylum,
17 withholding of removal, and relief under the Convention Against Torture (“CAT”). We assume the
18 parties’ familiarity with the underlying facts and procedural history of the case.

19 Where, as here, the BIA “agrees with an IJ’s ultimate credibility determination but
20 emphasizes particular aspects of the IJ’s reasoning,” we review “both the BIA’s and the IJ’s
21 opinions, including those portions of the IJ’s decision that the BIA did not explicitly discuss.” *Dong*
22 *Gao v. Bd. of Immigration Appeals*, 482 F.3d 122, 126 (2d Cir. 2007). We review the agency’s
23 factual findings, including adverse credibility determinations, “under the substantial evidence
24 standard, treating them as ‘conclusive unless any reasonable adjudicator would be compelled to
25 conclude to the contrary.’” *Niang v. Mukasey*, 511 F.3d 138, 145 (2d Cir. 2007) (quoting 8 U.S.C.
26 § 1252(b)(4)(B)). Because Dong-Chen filed his application for relief in June 2005, his application
27 is governed by the REAL ID Act of 2005, Pub. L. No. 109-13, div. B, 119 Stat. 302. *See Liang Chen*

1 *v. U.S. Attorney Gen.*, 454 F.3d 103, 106 n.2 (2d Cir. 2006) (per curiam). Section 101(a)(3) of the
2 Act, 119 Stat. at 303, added 8 U.S.C. § 1158(b)(1)(B)(iii), which permits an IJ to base a credibility
3 determination on “all relevant factors,” including the applicant’s “demeanor, candor, [and]
4 responsiveness”; “the inherent plausibility of [his] account”; and “the consistency between [his]
5 written and oral statements (whenever made and whether or not under oath, and considering the
6 circumstances under which the statements were made) . . . without regard to whether an
7 inconsistency . . . goes to the heart of [his] claim.” *Liang Chen*, 454 F.3d at 106 n.2 (quoting 8
8 U.S.C. § 1158(b)(1)(B)(iii)).

9 Dong-Chen’s principal argument on appeal is that the IJ erred in basing the adverse
10 credibility determination in part on an inconsistency between Dong-Chen’s testimony and asylum
11 application, on the one hand, and the record of his interview by a border patrol agent on Form I-213
12 when he entered the United States in 2004, on the other. Specifically, Dong-Chen testified and wrote
13 in his application that he came to the United States to escape persecution for being a Falun Gong
14 practitioner, whereas the Form I-213 reported that he came to the United States to seek employment.
15 He argues that the Form I-213 should be considered unreliable under the four factors enunciated in
16 *Ramsameachire v. Ashcroft*, 357 F.3d 169 (2d Cir. 2004), for analyzing whether the record of an
17 airport interview is a sufficiently accurate record of an alien’s statements to be worthy of
18 consideration in determining whether the alien is credible. *See id.* at 179.

19 We see no basis to reject the IJ’s reliance on this inconsistency as one factor in making the
20 adverse credibility finding. In *Felzcerek v. INS*, 75 F.3d 112 (2d Cir. 1996), we held that a “Form
21 I-213 contain[s] guarantees of reliability and trustworthiness that are substantially equivalent to those
22 required of documents admissible under Rule 803(8) [of the Federal Rules of Evidence, which

1 relates to public records and reports].” *Id.* at 116. Here, however, as the BIA specifically noted,
2 Dong-Chen does not argue that his I-213 is less reliable than I-213s are as a general matter. Indeed,
3 he testified that the other information on the form accurately reflected his statements. Additionally,
4 we note that the REAL ID Act expressly permits the BIA to consider inconsistencies between any
5 statements, wherever made, and that the agency here in fact considered *Ramsameachire* in making
6 its determination that the Form I-213 was sufficiently reliable to be used as one factor in an adverse
7 credibility determination. Accordingly, the BIA did not err by basing its adverse credibility
8 determination partly on the Form I-213.

9 Under the circumstances, however, this single factor cannot be more than modestly probative
10 of Dong-Chen’s credibility and is therefore insufficient, on its own, to sustain the BIA’s adverse
11 credibility finding. *See Belortaja v. Gonzales*, 484 F.3d 619, 626 (2d Cir. 2007) (“[A]n adverse
12 credibility determination . . . [must be] supported by substantial evidence and based on specific,
13 cogent reasons bearing a legitimate nexus to the determination.”). Nevertheless, the BIA also
14 reasonably relied on other factors that, taken together and in conjunction with the inconsistency
15 already noted, lead us to conclude that a reasonable factfinder would not be compelled to find Dong-
16 Chen credible. First, the IJ found that Dong-Chen lacked credibility because his asylum application
17 lacked much of the specificity and detail that his testimony contained. The IJ and BIA relied on at
18 least four omissions in Dong-Chen’s asylum application: (1) the place and length of Dong-Chen’s
19 detention; (2) how he escaped from detention; (3) the name of the friend who introduced him to
20 Falun Gong; and (4) the number of people with him when he was apprehended. This aspect of the
21 agency’s factfinding was proper because the agency may find an asylum applicant to lack credibility
22 when his asylum application entirely fails to mention incidents that his testimony establishes as

1 significant to his claim of asylum. *See Iouri v. Ashcroft*, 487 F.3d 76, 81-82 & n.4 (2d Cir. 2007);
2 *Jin Hui Gao v. U.S. Attorney Gen.*, 400 F.3d 963, 964 (2d Cir. 2005) (per curiam). Importantly, this
3 aspect of the agency’s factfinding was not an erroneous demand for greater testimonial specificity.
4 *See Qiu v. Ashcroft*, 329 F.3d 140, 150-53 (2d Cir. 2003), *overruled on other grounds by Shi Liang*
5 *Lin v. Gonzales*, 494 F.3d 296 (2d Cir. 2007) (en banc). *Qiu*, which limits the circumstances in
6 which the BIA may properly deny asylum on the ground that an alien’s testimony is “too vague,”
7 does not address cases, such as this one, in which the BIA finds that testimony lacks credibility
8 because it differs from the account provided in the asylum application.

9 Furthermore, even if each of these omissions is immaterial when considered in isolation, such
10 individualized consideration would be inappropriate because “an IJ need not consider the centrality
11 *vel non* of each individual discrepancy or omission before using it as the basis for an adverse
12 credibility determination.” *Liang Chen*, 454 F.3d at 106-07. “Rather, the IJ may rely upon the
13 ‘cumulative impact of such inconsistencies’ and may conduct an ‘overall evaluation of testimony
14 in light of its rationality or internal consistency and the manner in which it hangs together with other
15 evidence.’” *Id.* at 107 (citations omitted) (quoting *Xiao Ji Chen v. U.S. Dep’t of Justice*, 434 F.3d
16 144, 160 n.15 (2d Cir.), *modified on reh’g*, 471 F.3d 315 (2d Cir. 2006)). In this case, “the
17 discrepancies and omissions cited by the IJ, taken together, would allow a ‘reasonable adjudicator’
18 to disbelieve [Dong-Chen’s] account of his persecution.” *Id.* (citation omitted) (citing 8 U.S.C.
19 § 1252(b)(4)(B)).

20 Second, the IJ based the adverse credibility determination on Dong-Chen’s account of his
21 practice of Falun Gong while in the United States. Dong-Chen testified that it was preferable to
22 practice Falun Gong in groups and that he practiced in groups while in China. In fact, he was

1 practicing Falun Gong with a group when he was allegedly apprehended. Yet in the United States,
2 where he had been residing for over a year at the time of his testimony, Dong-Chen only practiced
3 Falun Gong alone, supposedly because he did not know any other practitioners. The IJ found this
4 account to be implausible given Dong-Chen's stated motivation for coming to the United States. We
5 see no reason to reject the IJ's reliance on this aspect of Dong-Chen's testimony. "An adverse
6 credibility finding may be based in part upon testimony that the IJ finds inherently implausible, as
7 long as the finding has a reasoned and supportable basis," *Tu Lin v. Gonzales*, 446 F.3d 395, 400 (2d
8 Cir. 2006), as this finding does.

9 We conclude that, viewing the record as a whole, substantial evidence supports the adverse
10 credibility determination here, and a reasonable factfinder would not be compelled to make a
11 contrary determination. We also conclude that the agency's decision to deny Dong-Chen's
12 application for withholding of removal and CAT relief, which is based on the same factual predicate
13 that the agency found Dong-Chen failed to establish, was supported by substantial evidence as well.
14 *See Paul v. Gonzales*, 444 F.3d 148, 154 (2d Cir. 2006); *Xue Hong Yang v. U.S. Dep't of Justice*,
15 426 F.3d 520, 523 (2d Cir. 2005).

16 We have considered Dong-Chen's remaining arguments and find them to be without merit.
17 For the reasons set forth above, therefore, the petition for review is hereby DENIED. Because we
18 have completed our review, Dong-Chen's pending motion for a stay of removal is hereby
19 DISMISSED as moot.

20
21 FOR THE COURT:
22 Catherine O'Hagan Wolfe, Clerk
23

24 By: _____
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